

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)

Petition for Declaratory Ruling Whether)
Voice over Internet Protocol Services)
Are Entitled to the Interconnection Rights of)
Telecommunications Carriers)

WC Docket No. 08-56

**COMMENTS OF THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

On April 11, 2008, the Vermont Telephone Company ("petitioner") submitted a Petition for Declaratory Ruling ("Vermont Petition") to the Federal Communications Commission ("Commission") seeking clarification as to the extent to which certain entities offering Voice over Internet Protocol (VoIP)-based services are entitled to interconnection with local exchange carriers pursuant to Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act"). The Washington Utilities and Transportation Commission ("UTC") respectfully submits these brief comments on the issues raised in the Vermont Petition.

The UTC agrees that the Commission must resolve the continuing ambiguity surrounding the regulatory status and statutory classification of VoIP-based service offerings and their service providers. The uncertainty regarding VoIP-providers' potential interconnection rights under Sections 251 and 252 of the Act, the matter to which the Vermont Petition seeks clarification, can be traced directly to the Commission's *Vonage Order*, where it preempted a Minnesota Public Utilities Commission ("MPUC") order that attempted to apply "traditional" state

regulatory obligations on Vonage's DigitalVoice service.¹ There, the Commission determined that Vonage's DigitalVoice service cannot be separated into interstate and intrastate components for potential application of federal and state regulation, and that exercising its authority to preempt state regulation would ensure protection of a valid federal regulatory objective that could be undermined by state regulation. Yet in preempting the MPUC, the Commission declined to determine or apply a statutory classification for Vonage's DigitalVoice service (and similar services offered by other VoIP-providers including cable companies) as either a "telecommunications service" or "information service" under the definitions in the Act.

By "federalizing" the provision of VoIP service without classifying it as either a "telecommunications service" or an "information service," the FCC effectively thwarted state commissions' ability to address legitimate matters related to VoIP services, including the interconnection issues raised in the Vermont Petition. As petitioner notes, the Act requires the Commission to promulgate and oversee rules pertaining to interconnection among providers of "telecommunications services." However, the disinclination of the Commission to classify VoIP providers has produced uncertainty in the states regarding their corresponding responsibilities under Section 252 of the Act to mediate, arbitrate, and approve interconnection agreements between incumbent LECs and certain VoIP providers. For example, in the state of Washington VoIP providers recently submitted two arbitration petitions seeking to resolve disputed interconnection terms with incumbent local exchange carriers. The first petition was filed by a registered telecommunications carrier, seeking to establish interconnection with an incumbent

¹ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267.

LEC on behalf of its wholesale cable company customer using VoIP technology.² The second petition was filed directly by a cable VoIP provider to address particular rates to be applied for interconnection.³ While the UTC has and will continue to process arbitration requests in compliance with Section 252 of the Act (including those submitted by or on behalf of VoIP providers), the ambiguity surrounding state commission responsibility regarding interconnection-related arbitration petitions submitted by or on behalf of VoIP providers has raised a number of concerns that could be alleviated or resolved if the Commission would address the classification of VoIP providers and provide specific guidance on the issues raised in the Vermont Petition.

The UTC supports extending interconnection rights to VoIP providers by treating them as telecommunications carriers provided they are also required to assume the responsibilities and obligations of telecommunications carriers as well. In Washington, VoIP providers have not registered as telecommunications carriers and do not remit regulatory fees to the UTC on telecommunications revenues derived in the state. Nevertheless, at least two providers (or their wholesale provider) have requested agency action on arbitration matters and the UTC anticipates additional requests in the near future. Such requests present a bit of a quandary for the agency. The UTC is asked by VoIP providers to intervene and act on issues raised by their petitions for arbitration and to resolve issues in their favor, but these same entities are quick to point out that the agency has no effective jurisdiction over the rates, terms, or conditions of their service offerings. In each case they point specifically to the *Vonage Order* and their classification under

² Docket No. UT-073031, *Petition of Sprint Communications Company L.P. for Arbitration with Whidbey Telephone Company*, filed October 17, 2007.

³ Docket No. UT-083025, *Petition of Comcast Phone of Washington, LLC, for Arbitration with United Telephone Company of the Northwest, Inc.*, filed April 28, 2008.

federal law. Moreover, because these entities do not pay regulatory fees, the UTC is expending state government resources – as well as regulatory fees from non-VoIP providers – on their behalf without any contribution by them or their customers.

The Vermont Petition makes clear that the Commission's apparent unwillingness to classify VoIP providers as telecommunications carriers creates ambiguity and confusion regarding matters affecting state commissions. For example, in addition to the uncertainty posed by requests for interconnection and payment of appropriate regulatory fees, state commissions such as the UTC are left to grapple with consumer confusion over dispute resolution issues arising from VoIP services, and lack of funding and support of local PSAP (public service answering point) agencies for 911 services by VoIP providers.

In contrast to the ambiguity regarding state jurisdiction, the Commission has on at least three occasions taken concrete steps to address federal regulatory issues pertinent to the provision of telecommunications services by extending certain regulatory obligations to VoIP providers. First, in the *VoIP 911 Order*, the Commission defined a particular form of internet protocol (IP)-enabled service – interconnected VoIP services – and required providers of these services to provide 911 emergency calling capabilities to their customers.⁴ Thus, the requirement of traditional telecommunications carriers to provide 911 calling capability to their customers was extended to interconnected VoIP providers. In a second proceeding, the Commission imposed Communications Assistance for Law Enforcement Act ("CALEA") requirements on interconnected VOIP providers, again without making a determination as to the

⁴ *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, May 19, 2005, FCC 05-116.

statutory classification of VOIP services.⁵ Finally, the Commission established federal universal service contribution obligations on providers of interconnected VoIP services - again, without defining such entities as providers of "telecommunications services" or "information services."⁶

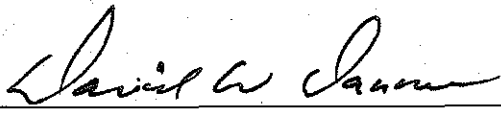
These orders make apparent the Commission's awareness that consumers are increasingly turning to VoIP services as alternatives to the traditional wireline telephone offerings of incumbent local exchange carriers. While these marketplace adjustments appropriately reflect the technological changes that can have important, positive, and far-reaching consequences for consumers, it is important that issues related to the provision of voice-grade telecommunications services not be ignored or prematurely assigned to a regulatory dustbin as a consequence of the Commission's reluctance to classify VoIP services under federal law. Although the Commission has addressed, from a federal perspective, certain issues such as 911 coverage, CALEA, and payments into the federal universal service fund, the effect of "federalizing" delivery of VoIP services has created a dilemma for state regulators. As the petitioner notes, the current jurisdictional ambiguity results in a situation in which VoIP providers appear to have the best of both worlds by "cherry-picking" their regulatory status with state commissions, seeking reasonable interconnection terms and conditions but avoiding the reasonable and practical state regulatory obligations imposed on companies and services with which they compete. They should not have it both ways.

⁵ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, First Report and Order and Further Notice of Proposed Rulemaking, August 5, 2005, FCC 05-153.

⁶ *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, June 21, 2006, FCC 06-94.

We urge the Commission to grant the petitioner's request to clarify the status of VoIP as a telecommunications service under the Act, and the obligations that come with such a classification.

Respectfully submitted this 19th day of May, 2008

By: 
David W. Danner
Executive Director
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250